Maryland Insurance Administration
2017 Essential Health Benefit Selection
14 May 2015

The **Maryland Women's Coalition for Health Care Reform,** and the 30 organizations cited below, are pleased to submit comments to the Maryland Insurance Administration (MIA) on the selection of the 2017 Essential Health Benefit Benchmark Plan (EHB). The Coalition is an alliance of more than 1,800 individuals and 100 organizations, whose mission is to advance health equity through access to high-quality, comprehensive and affordable health care for all Marylanders. In that capacity, the Coalition has been particularly active in advancing the voices and interests of consumers in health care reform since passage of the Affordable Care Act (ACA). This included our participation in the decision-making process for the EHB that serves as Maryland's current benchmark. That benchmark plan was selected through an open and inclusive process that allowed time for a comprehensive analysis of the alternatives and resulted in a plan with optimal benefits across all categories.

We understand that the timeframe for the selection process this time is far more limited and, therefore, particularly appreciate your consideration of our recommendations. These are based upon a review of the three possible benchmark plans and related federal guidance. In preparing these we:

- Worked together to prepare a comprehensive document that reflects the priorities of the consumer and community provider organizations that are signatories to this document.
- Understand that behavioral health and habilitative services advocates are submitting more detailed comments in those areas, given the need to provide greater policy detail;
- Included recommendations regarding the implementation of the EHB to promote greater transparency for consumers. We understand that the MIA will likely not have time to consider these recommendations before the selection of the benchmark plan, but we would appreciate ongoing dialogue about the issues.

Recommendation 1: We believe that the BlueChoice HMO HSA/HRA Plan or the BlueChoice HMO Referral Plan best address the needs of consumers. It is, therefore, our preferred option. However, we would note the issues raised in the comments of the University of Maryland Drug Policy Clinic and those in recommendation four below. These will need to be addressed with the final plan selection.

The overriding reason for this recommendation is that the **BlueChoice plans have a higher level of specificity** in their benefit structures. The EHB should identify with maximum specificity the services to be included in each benefit category based upon the HHS requirements (EHB data rule - 77 Fed. Reg. 140, July 20, 2012) that there be

a significant level of specificity in the identification (and approval of) the EHB option chosen by the State.

This is particularly important because consumers require both transparency and specificity in making well-informed decisions about selecting a health insurance plan and health plans require benchmark specificity in order to appropriately design plans to meet the benchmark requirements The BlueChoice plans have a higher level of specificity in their benefits design than does the United Plan. For example, the BlueChoice plans include:

- Indication that allergy testing, allergy treatment, and allergy shots are covered, while the United Plan only specifies coverage for shots. The United Plan may cover allergy testing and treatment, but it is not clear from its benefit design;

- Delineation of covered infertility services to include counseling, testing, artificial insemination, and intrauterine insemination. The United Plan does not directly address whether counseling, testing, and artificial insemination are covered. While the United Plan may very well cover these services, it is again not clear in the plan documents; and

- Description of emergency room services as including coverage of facility fees, professional fees, and follow-up care after emergency surgery. The United Plan does not specify coverage information for facility vs professional charges, and it is silent on coverage for follow-up service. This information would be useful to the consumer and should be clearly stated.

- A more complete listing of preventive services. However, it includes no mention of adolescent depression and alcohol misuse screening and counseling. This would need to be addressed in the benefit design to conform to all A and B USPTF designated services

Recommendation 2: The MIA should address the need to incorporate non-discrimination provisions in the benefits design of EHB:

It is critical that the benefit design of the EHB to reflect the federal anti-discrimination requirements. 45 C.F.R. § 156.125(a) and (b) state that an issuer cannot aim to provide the essential health benefits as defined in Section 1302 of the Affordable Care Act if its benefit design—or the implementation of its benefit design— discriminates on the basis of an individual's sexual orientation, gender identity, sex, race, color, national origin, disability, age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions.

We recommend the MIA take the following steps to ensure the plan design of the EHB does not discriminate:

- The MIA should ensure that the EHB includes an anti-discrimination provision, consistent with federal law. We would note that the BlueChoice Plans include a specific provision in their plan documents, while the United Plan does not;

- The MIA should incorporate *HB 838/SB 416 – Health Insurance –Coverage for Infertility Services*. This legislation, passed by both chambers of the 2015 General Assembly, ensures that same-sex couples have access to coverage of infertility services; and

- The MIA should take steps to reverse the current exclusion of certain services related to gender identity. In particular we would note that all three plans include exclusions relating to "treatment leading to or in connection with transexualism, or sex changes or modification including but not limited to surgery."

- It is difficult to determine potential discrimination issues in the drug benefit without the formulary. Therefore, we recommend that, as the MIA reviews each plan's current formularies, it ensures that any discriminatory issues are addressed for future plans.

Recommendation 3: The MIA should incorporate the new federal definition of habilitative services into the EHB.

We recommend that the MIA specifically incorporate the new federal definition of habilitative services into the EHB for the 2017 plan year. The definition specifically requires that plans:

> *Cover health care services and devices that help a person keep, learn or improve skills and functioning for daily living (habilitative services.) Examples include therapy for a child who is not walking or talking at the expected age. These services may include physical and occupational therapy, speech-language pathology and other services for people with disabilities in a variety of inpatient and/or outpatient settings.*

Incorporation of this definition will ensure that all enrollees have access to medically necessary habilitative services and devices. We also support that letter submitted by the Maryland Occupational Therapy Association and disabilities advocates which provides a more detailed review on how the new federal rule should be implemented in Maryland.

Recommendation 4: The MIA should ensure that the EHB does not include outdated references to the scope of practice of health care practitioners.

Our health care system has evolved to incorporate the practices of a wide-range of health care practitioners. Where plans restrict coverage in plan documents to specific types of practitioners, it is important to ensure that those restrictions are not based on out-dated scope of practice. We are happy to work with the MIA and the carriers to ensure that plans are not implementing outdated scope of practice restrictions. In addition, we want to specifically ensure that the language of the EHB does not reference the following restrictions contained in the BlueChoice plans:

- In the definitions section, the BlueChoice plans define "Primary Care Provider" or PCP as a "Primary Care Physician." This language does not reflect the current practice of including nurse practitioners and nurse midwives in the definition of PCP;

- In the description of Nurse Midwife Services, the BlueChoice Plans specify that nurse midwives must have collaborative agreements with physicians. This is an outdated provision. Maryland law and the Maryland Board of Nursing have not required this for over 5 years; and

- Language in the BlueChoice Plans regarding the providers who may be reimbursed for outpatient and intensive outpatient mental health and substance use disorder services should specifically include substance use disorder treatment programs. Substance use disorder treatment services are provided in large part by certified treatment programs, through certified practitioners as well as licensed practitioners. The BlueChoice plan's limitation on reimbursement for services provided by licensed individual practitioners excludes the core group of substance use treatment providers in Maryland and severely restricts access to care. The United plan has addressed this important issue by allowing for outpatient services to be provided in either a provider's office or an "alternate facility," which is defined to include an outpatient facility that is permitted by law to provide mental health or substance use disorder services.

Recommendation 5: The MIA should continue to collaborate with consumer advocates beyond the selection of the benchmark plan to ensure that consumers are receiving the full benefits of the EHB provisions in the ACA.

We recognize that the MIA has a short period of time in which to select the benchmark plan. Therefore, our intention is to continue a dialogue with the MIA with respect to the following after the benchmark plan selection process:

- **Transparency:** We want to support the MIA's commitment to ensure that consumers have access to meaningful information about benefits. We are concerned about confusion and lack of clarity for consumers where information provided by carriers in Summary and Benefits Coverage (SBC) documents is inconsistent with other plan documents. We are also concerned that carriers differ in how and what is disclosed to consumers regarding their processes for determining medical necessity. Consumers require a clear definition in order to make informed decisions about their plan selection and care; and

- **Accountability:** We want to work with the MIA to ensure that the appropriate processes are in place so that plans are accountable for complying with federal and State law regarding benefits structure, including the requirements of the Mental Health and Addiction Equity Act and the family planning provisions of the Affordable Care Act.

CONCLUSION

Thank you for your consideration of our recommendations. Please let us know if we can provide further information to assist the MIA in the selection of the 2017 benchmark plan.

Submitted by: Leni Preston, Chair - leni@mdchcr.org

Supporting Organizations

Advocates for Children and Youth
American College of Nurse Midwives - Maryland Affairs
Equality Maryland
Drug Policy Clinic, University of Maryland Carey Law School
HealthCare Access Maryland
Maryland Addiction Directors Council
Maryland Center on Economic Policy
Maryland Citizens' Health Initiative
Maryland Disability Law Center
Maryland Nurses Association
Mental Health Association of Maryland
Montgomery County Department of Health and Human Services
National Alliance on Mental Illness -Maryland and
- NAMI Anne Arundel County
- NAMI Carroll County
- NAMI Cecil County
- NAMI Frederick County
- NAMI Harford County
- NAMI Howard County
- NAMI Lower Shore
- NAMI Metropolitan Baltimore
- NAMI Montgomery County
- NAMI Prince George's County
- NAMI Southern Maryland
- NAMI Washington County

National Association of Social Workers
Planned Parenthood of Maryland
Primary Care Coalition of Montgomery County
Progressive Cheverly
Unitarian Universalist Legislative Ministry of Maryland
Women's Law Center of Maryland